

REMARKS

Entry of this Preliminary Amendment prior to the examination of the above-identified RCE on the merits is respectfully requested.

Claims 41-60 are pending in the present application. Claims 27-33 have been withdrawn. Claims 1-26 and 34-40 were cancelled without prejudice. New claims 41-60 have been added. The specification was amended on page 20, first paragraph to incorporate subject matter of original claim 5 which was originally filed with the application. In addition, the specification was amended on page 21, lines 1-6 to incorporate the subject matter of original claims 25-26 which were originally filed with the application. No new matter has been introduced by virtue of the amendments.

In the Final Office Action, the Examiner had rejected claims 1-26, 36-37 and 40 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,422,127 to Dube et al. and U.S. Patent No. 5,711,982 to Takemori et al. While Applicant believes the present cancellation of claims 1-26, 36-37 and 40 obviates this rejection, the Applicant would like to further clarify pertinent facts related to the present invention to more clearly describe its attributes and distinctions over the prior art.

The present invention relates to a food composition which has at least the following properties:

- 1) is all-natural, free of chemical or artificial ingredients;
- 2) contains no flour, and thus is gluten-free;
- 3) includes a sweetener which is sugarless yet all natural; and
- 4) is ideal for e.g., diabetics in that for a diabetic patient on a diabetic diet having no sugar, it reduces blood sugar concentration levels.

The present invention can be used in recipes for producing foodstuffs such as baked goods, ice cream and beverages. In the case of baked goods, the food composition according to the present invention takes the place of/essentially functions as flour and sugar in a recipe to produce the baked good yet advantageously does NOT contain any flour or sugar and thus provides the ability to create a low-carbohydrate, flour-free and sugar-free foodstuff. Such foodstuff, in turn, would advantageously retain the texture and taste of conventional goods containing sugar without having any added sugar, and would also essentially be gluten-free.

Moreover, the present invention is an all-natural product, containing no artificial additives, artificial sugar-substitutes or chemicals. In a foodstuff created using the present invention, this results in a naturally sweetened product which can be safely ingested by diabetics, and which, indeed performs a surprising beneficial function for diabetics, in stabilizing blood sugar concentration.

Regarding the cited references, Dube is focused on improving vitamin D stability during storage and involves adding vitamin D esters to nutritional compositions to increase the stability of vitamin D. As such, Dube is merely concerned with vitamin preservation and fails to disclose or suggest producing a dietetic food composition, namely, a food composition free of flours or sugar for use in a recipe to create a sugar-free food product, essentially as claimed in claims 41 and 50.

Takemori discloses a process for preparing a de-lactose milk having a fat and a protein which are homogenized. Its aim is to reduce lactose content. In contrast, the focus of the present invention not only bears no relation to preparing de-lactose products, but in fact, the food composition of the present invention CONTAINS lactose. That is,

both the whey as claimed in claims 41, 50 and 59 and the calcium salt as claimed in claims 50 actually contain lactose. Moreover, while Takemori explicitly seeks to **exclude** lactose, lactose products may be freely **added** to the food composition of the present invention to prepare a food product (e.g., a baked good, dairy products). Indeed, Takemori fails to disclose or suggest a food composition free of flours or sugar for use in a recipe to produce a sugar-free food product, essentially as claimed in claims 41 and 50.

Furthermore, neither Dube nor Takemori disclose or suggest a sugar-free **baked food product** comprising a sugarless natural sweetening agent having particular functional properties of sugar, said sweetening agent consisting essentially of xylitol, essentially as claimed in claim 59.

Finally, there is no nexus for which to combine Dube and Takemori, since they are directed to completely different inventions with different uses and ingredients.

CONCLUSION

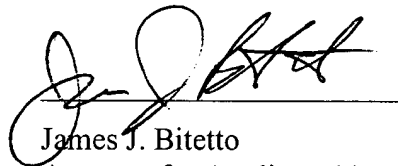
The Applicant encloses herewith a duly executed Revocation of Previous Powers and Submission of New Power of Attorney.

New claims 41-60 have been added. The Applicant respectfully requests consideration of the new claims added herewith. The Examiner is encouraged to contact the undersigned should any questions arise.

In the event that any additional fees or charges are required at this time in connection with the application above and beyond the fees currently paid herewith, they may be charged to applicant's representatives Deposit Account No. 50-1433.

Respectfully submitted,

By:


James J. Bitetto
Attorney for Applicant(s)
Registration No. 40,513

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Mailing Address:

KEUSEY, TUTUNJIAN & BITETTO, P.C.
14 Vanderventer Avenue, Suite 128
Port Washington, NY 11050
Tel.: (516) 883-3868
Fax: (516) 883-3869